

### **REMARKS**

Applicants have reviewed the Final Office Action mailed March 17, 2009. Claims 1, 30, 36, and 37 are amended. Claims 1, 4-8, and 10-37 are pending. Applicants request reconsideration.

Claims 1, 7, 12-17, 19-24, 27-30, and 35-37 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Ebert (GB 2151201) in view of Monte (U.S. Patent No. 5,578,336) and Brox (U.S. Patent No. 4,780,316).

Claims 1, 4-7, 11, 12, 15-17, 19-30, and 35-37 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Ebert in view of Cavanak (U.S. Patent No. 5,639,724) and Brox.

Claims 1, 4-7, 11, 12, 15-17, 19, 20, 22, 24-30, and 35-37 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Lech (U.S. Patent No. 6,027,746) in view of Cavanak.

These three rejections are traversed together.

The Examiner's reasoning relied on references discussing storage for extended periods of time. Claims 1, 30, 36, and 37 have been amended to recite that the aging time has an upper limit of 64 hours. Support for this requirement can be found in the text running from page 36, line 17 to page 38, line 5 of the specification. This distinguishes the present claims over the cited references, which had a minimum storage period of one month. This also responds to the Examiner's statement that the feature upon which applicant relies (i.e. that storage for several weeks would change the crystals into undesirable Type VI crystals) was not recited in the rejected claims.

The examples show that the claimed conditions are suitable for (i) forming Type V crystals and (ii) preventing the Type V crystals from changing into undesirable Type VI crystals. As to (i), Production Example 29 shows that cacao butter aged from 25-40°C for 16 hours is mainly Type V crystal. As to (ii), Production Example 30 shows that maximal hardness was obtained at 35°C after aging for 16 hours and that such hardness did not change up to 64 hours. As discussed on page 20 of the specification,

Type VI crystals are harder than Type V crystals. Thus, the lack of change in hardness shows that Type VI crystals were not formed during the 64-hour period.

Thus, the claimed subject matter is not obvious over the cited references. Applicants request withdrawal of the three 103(a) rejections.

Claim 10 was rejected under 35 U.S.C. 103(a) as allegedly being obvious over Ebert in view of Monte or Cavanak and Nishizawa (U.S. Patent No. 4,463,024).

Claims 8, 12-16, and 31-34 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Lech, in view of Cavanak and Katsuragi et al. (U.S. Patent No. 5,756,543).

Claims 17 and 18 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Lech in view of Mehta (U.S. Patent No. 5,084,278).

These three rejections are traversed together.

These rejected claims all depend from claim 1. Applicants have argued above that the references do not suggest the desirability of the instant claims. Applicants do not separately argue the patentability of these claims.

Applicants request withdrawal of these three § 103(a) rejections.

**CONCLUSION**

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1, 4-8, and 10-37) are now in condition for allowance.

In the event the Examiner considers personal contact advantageous to the disposition of this case, she is hereby authorized to call Richard M. Klein, at telephone number 216-363-9000, Cleveland, OH.

It is believed that no fee is due in conjunction with this response. If, however, it is determined that fees are due, authorization is hereby given for deduction of those fees, other than the issue fees, from Deposit Account No. 06-0308.

Respectfully submitted,

FAY SHARPE LLP

June 16, 2009  
Date

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	Signature: <u>Lynda S. Kalemba</u>
Date: <u>06-17-09</u>	Name: Lynda S. Kalemba

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